

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 28, 2008

No. 08-10575
Summary Calendar

Charles R. Fulbruge III
Clerk

MATILDE ROSALES

Plaintiff - Appellee

v.

JOSE PENA, In his individual and official capacity;
WILLIAM PHILLIPS, In his individual and official capacity

Defendants - Appellants

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:05-CV-588

Before REAVLEY, WIENER, and PRADO, Circuit Judges.

PER CURIAM:*

These police officers appeal from the district court's judgment denying their qualified immunity defense to plaintiff's claim of assault and battery in the course of an unlawful arrest. Appellants' briefs present a spirited advocacy of the record on their behalf. That will not suffice in view of the district court's decision that fact issues are raised by the evidence in favor of the plaintiff's

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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claim. This court therefore lacks jurisdiction of the appeal. See *Kinney v. Weaver*, 367 F.3d 337, 348 (5th Cir. 2004).

DISMISSED.